IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Niyaj Mohammad & Anr. Versus Nazir Mohammad.

S.B. Criminal Misc. Petition No. 90/2003
against the order dated 4-12-2002 passed
by the Judicial Magistrate, Pali, in Criminal
Case No.78/2002.

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Date of Order: August 07, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Mahesh Bora, for the petitioners.
Mr. Suresh Kumbhat, for the non-petitioner.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners seek modification in the order dated 4-12-2002 passed by the Judicial Magistrate, Pali (for short, "the trial Court" hereinafter), whereby the trial Court issued warrant of recovery for a sum of Rs. 31,400/-, whereas according to the petitioners, the arrears of monthly maintenance works out to Rs.62,400/-.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

An application under Section 125 of the Code was

filed by Smt. Jahoor Bano, the mother of Gulshan and the present two petitioners seeking monthly maintenance allowance. That application came to be allowed by the trial Court vide order dated 23-6-1997. The trial Court granted monthly maintenance in favour of Smt. Jahoor Bano for the Iddat period amounting to Rs.1500/-; in favour of Gulshan (daughter of the non-petitioner) @ Rs.200/- per month and in favour of the present petitioners (who were applicants No.3 and 4 before the trial Court) @ Rs.300/- per month. That order of the trial Court came to be challenged by Smt. Jahoor Bano and others, who were applicants in the application under Section 125 of the Code, before the Additional Sessions Judge, Pali (for short, "the Revisional Court" hereinafter). The Revisional Court, vide order dated 23-7-1999, set aside the order granting maintenance in favour of Smt. Jahoor Bano; however, in the body of the order, the Revisional Court held that the maintenance granted to petitioners Niyaz Mohammad and Shokin Mohammed @ Rs.300/- each appears to be on the lower side and accordingly enhanced the same to Rs.400/- per month; and in favour of Gulshan, the amount of maintenance was enhanced from Rs.200/- to Rs.400/- per month. However, in the operative portion, it appears that while enhancing the maintenance in favour of the present petitioners from Rs.300/- to Rs.400/- per month each, it has been stated that the maintenance to them has been enhanced to Rs.400/-

per month. Obviously, from the body of the order, the operative portion of the order passed by the Revisional Court does not tally and the expression "@ Rs.400/-each" appears to have been omitted.

The non-petitioner failed to pay the maintenance allowance and, therefore, the petitioners filed an application before the trial Court for issuing warrant of recovery calculating the amount @ Rs.400/- per month in favour of the each of the petitioners. The trial Court calculated the amount as if a sum of Rs.400/- per month has been granted as maintenance in favour of both the petitioners jointly.

I have carefully gone through the orders passed by the trial Court as well as the Revisional Court. Neither the trial Court nor the Revisional Court says that the maintenance granted in favour of the two petitioners @ Rs.400/- per month is jointly, whereas in para 8 of the order of the Revisional Court, it has been specifically stated that the trial Court granted maintenance @ Rs.300/- per month each in favour of petitioners Niyaz Mohammad and Shokin Mohammad which is enhanced to Rs.400/- per month. This clearly shows the intention of the Revisional Court that the maintenance @ of Rs.300/- per month each granted to the petitioners was on the lower side and the same was enhanced from Rs.300/- to Rs.400/- per month each. In the circumstances, therefore, the matter needs to be

remanded to the trial Court to pass a fresh order keeping in view the intention of the orders of the trial Court as well as of the Revisional Court, more particularly there cannot be a order of granting joint maintenance in favour of both the petitioners when the trial Court has passed the specific order in favour of each of the petitioners and there could be no reason for awarding joint maintenance for two persons.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated 4-12-2002 passed by the trial Court in Criminal Case No. 78/2002 is set aside and the matter is remanded to the trial Court to pass a fresh order in accordance with law.

(H.R. PANWAR), J.

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